

## CRIMINAL JUSTICE

# The Exorbitant Financial Cost Associated With Wrongful Criminal Convictions in Massachusetts

**Tens of Millions in Taxpayer Dollars Are Being Spent  
Because of Police and Prosecutorial Misconduct!**

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By  
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Depending upon the source, the numbers may vary, but there is one thing that remains crystal clear; Massachusetts taxpayers are dishing out exorbitant amounts of cash to pay for the mistakes of police and prosecutors.

In 2004 Massachusetts joined 28 other states and enacted a law that allows those wrongfully convicted up to \$500,000 in compensation. Other states have similar laws, In California a wrongfully imprisoned person can seek up to \$100 for each day spent in unlawful confinement. Louisiana has a wrongful conviction cap of \$25,000 per. year, not to exceed \$250,000 plus \$80,000 for "loss of life opportunities." Missouri has a cap on recoverable damages of \$50 per. day. Maine has a cap of \$300,000 regardless of the amount of time spent in confinement. In 2009, Texas enacted what is known as the "Tim Cole Act" that allows up to \$80,000 per year and other benefits for each year a person is wrongfully confined. Wisconsin's cap is set at \$25,000, no matter how long a wrongfully convicted person is incarcerated, and Florida has a cap of \$2 million, no matter the length of time. However, in addition to the maximum \$500,000 award in

Massachusetts, those who have been wrongfully convicted and imprisoned are also free to sue state and federal entities such as individual police or police departments. In one infamous Massachusetts case, wrongfully convicted individuals received a very substantial amount, upward of \$100 million.

**Ayer, Massachusetts  
May 21, 1980**

One of the most egregious examples of police misconduct in Massachusetts in recent memory was uncovered in the case of Kenneth Waters.

On May 21, 1980 Katharina Brow was found murdered in her home in the town of Ayer. Ms. Brow had been viciously stabbed suffering more than thirty wounds to her body. From the start of their investigation the police believed that robbery was the motive in the brutal slaying. Investigators quickly discovered fingerprints on several objects at the scene of the crime. They also found blood that they had reason to believe may have belonged to the perpetrator. The police investigation had also determined that the crime had occurred sometime



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between 7:00 and 10:45 a.m. The name of Kenneth Waters, a local resident who was known to police, came up as a possible suspect during the early stages of the police investigation. However, at that particular point the police were able to exclude him as a viable suspect.

### **In Spite of Innocence 18 years – 3 months, 3 days in Prison**

When he was questioned by police, Mr. Waters offered what most would consider as an **“iron clad alibi.”** He provided documentation, including time cards, from work that indicated that he had been working his job at a local diner until 8:30 a.m. When he left the diner, he was accompanied by a female waitress, who drove him home. He further offered that he had also attended a pre scheduled 9:00 a.m. court appearance immediately after he left work on the morning of the crime. Mr. Waters had not left the court house until 11:00 a.m. In addition, Waters had agreed to take a voice stress test at the request of police, and had passed that test. He also submitted a hair sample, which the police tested, and the sample provided by Waters did not match hair found at the crime scene. In addition, while at the police station, the police had also checked his entire body for marks and scratches that would indicate an injury. He had none, and therefore could not possibly be the source for blood left at the crime scene.

Given such an overwhelming showing of innocence one could reasonably assume that Mr. Waters would have been immediately permanently excluded as a possible suspect. Following information gleaned from a paid police informant, Kenneth Waters was arrested in October of 1982 and charged with the murder of Katharina Brow. At

a subsequent trial, Waters would be convicted and sentenced to serve the rest of his life in state prison.

During the early stages of his incarceration Waters filed successive motions, including a motion for a new trial, a follow up appeal, and a writ of habeas corpus with the courts. All were denied. Despite his countless setbacks in the court system, Waters continued to maintain his innocence. What no one knew at the time was that Kenneth Waters had a secret weapon in his fight against injustice; his sister Betty Anne. There are no words that can accurately define the degree of loyalty that Betty Anne Waters had for her brother Kenny.

### **Finally, Victory for Kenny Waters**

By all accounts, Betty Anne Waters is an extraordinary woman. The trials and tribulations that she endured during her quest for justice for her brother would much later come to light in a 2010 Hollywood movie; **Convictions**, starring Hilary Swank. Betty Anne Waters was the mother of two small children and she was also a very determined fighter. Working as a waitress, she put herself through law school and visited her brother faithfully at a number of different Massachusetts state prisons, including MCI-Norfolk, the states largest prison. There, she vowed to free Kenneth by proving his innocence once and for all.

What followed was a protracted legal battle that lasted for many years. Finally, after 18 years, 5 months and 3 days, she achieved victory. Betty Anne Waters, with the assistance of the Innocence Project, freed her brother Kenneth from prison. On March 15, 2001 Kenneth Waters walked out of prison a free man. During his quest for exoneration it was shown that officers at the Ayer Police



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Department had not only withheld exculpatory evidence favorable to the defendant, Mr. Waters, they had also committed perjury as well. As a result of the civil court proceedings initiated by Betty Anne Waters, Ayer police chief Philip Connors and Officer Nancy Taylor Harris were convinced that their best course of action would be to accept an early retirement from the police department .

Unfortunately, Kenneth Waters would not live to see his sister achieve ultimate victory. Six months after his release from prison, Waters suffered a fatal fall while returning home from a grocery trip. Acting as the administrator of his estate, his sister Betty Anne filed a civil action in federal court against Police Chief Connors, Officer Taylor-Harris and the town of Ayer. On July 13, 2009 the town of Ayer settled one suit for \$3.4 million. In a separate ruling on September 17, 2009 the court awarded damages that totaled \$1,000 per day for every day that Waters had spent in prison. The total amount of that award was a staggering \$6,729,000. The court also awarded another \$4 million in damages for mental anguish, pain and suffering. The total sum awarded to Betty Anne Waters came to \$14.1 million.<sup>1</sup>

While the Waters case presents a telling example of the astronomical cost associated with police and prosecutorial misconduct in criminal proceeding, it surely does not stand alone.

#### **From Death Row to Freedom**

Perhaps the most stunning example of deliberate police and prosecutorial misconduct in the history of criminal prosecutions in Massachusetts can be found with the state's case against Henry Tameleo, Peter Limone, Louis Grecco, Joseph Salvati, and Ronald Cassesso.

In 1968 all of the above named individuals were convicted in the 1965 murder of Edward "Teddy" Degan. Their conviction was based on the perjured testimony of notorious Boston hit man Joseph "The Animal" Barboza. Limone, Grecco, Tameleo, and Cassesso were sentenced to die in the electric chair. Salvati and another man, Wilfred "Roy" French were sentenced to spend the rest of their natural life in prison. Fortunately, after having spent almost four years on death row, their death sentences were commuted as a direct result of a 1972 United States Supreme Court case that outlawed capital punishment.<sup>2</sup>

Cassesso, Grecco and Tameleo would all die in prison while serving their life-without-parole sentences. Salvati would win a commutation of his prison sentence from Massachusetts Governor William Weld in 1997. Limone would eventually be freed in 2001 when the long suppressed truth finally came to light. By that time he had served thirty-three years in prison for a crime that he did not commit. Had it not been for the discovery of secret long withheld FBI documents, there is little doubt that all these men would have eventually expired as innocent men in prison.

A subsequent lawsuit filed in federal court by those still alive, and also on behalf of the families of those who passed while incarcerated led to what is perhaps one of the largest monetary award in the country in a wrongful conviction case. The total amount awarded was in excess of **\$100 million**.

#### **The City of Boston alone has settled at least six wrongful conviction cases for \$3 million or more since 2004**

Large cash settlements in cases of wrongful convictions are not as uncommon as most would like to believe. According to a 2015 response to a freedom of information request filed by the Boston Globe, the City of Boston alone settled at least six wrongful conviction cases for \$3 million or more since 2004.<sup>3</sup>



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According to the Boston Globe, in 2008 the City of Boston settled a wrongful conviction case with Anthony Powell who had spent 12 years in state prison for a rape that he did not commit. Mr. Powell received \$3.8 million. In 2009 the city settled for the sum of \$3.25 million with Ulysses Rodriguez Charles. Mr. Charles spent 18 years in prison for 3 rapes that he did not commit. In 2013 the City of Boston also settled with James A. Haley. Mr. Haley spent 34 years in state prison for a murder that he did not commit. Mr. Haley's settlement totaled \$3 million. Then there is the case of Stephen Cowans. Mr. Cowans was wrongfully convicted in the 1997 shooting of a Boston police officer. Fortunately for Cowans, the New England Innocence Project came to his aid and sought DNA testing that would eventually prove his innocence. Mr. Cowans received a settlement of \$3.2 million.

### Shawn Drumgold

Little 12 year-old Tiffany Moore was killed in a hail of bullets as she sat on a mailbox in the Roxbury section of Boston back in 1998. Twenty-four year-old Shawn Drumgold was charged and convicted for her murder. Drumgold was sentenced to serve the rest of his life, without the possibility of parole in prison. Following a 15 year legal battle to prove his innocence, a battle that was waged by his new attorney Rosemary Scapicchio, Drumgold would eventually be released from state prison in 2003. Had it not been for the tenacity of attorney Scapicchio, who enjoys a hard earned reputation as one of Boston's top criminal defense attorneys, Drumgold may never have breathed a breath of fresh air outside prison walls.

After another protracted legal fight, attorney Scapicchio won a settlement with the City of Boston, who agreed to pay Drumgold \$5 million in damages for his wrongful conviction. The city of

Boston also agreed to pay Scapicchio an additional \$1.6 million in legal fees. Standing alone, the city of Boston has doled out almost \$20 million in wrongful conviction settlements during the past decade.

### The Massachusetts Compensation Law

According to the most recent data available, 63 individuals have filed claims with the state under the 2004 law allowing up to \$500,000 in damages from the state for wrongful convictions. That legislation was intended to compensate those wronged by the justice system. Of those 63 claims, 19 have been dismissed and 23 have been settled for sums ranging from \$60,000 to the allotted maximum of \$500,000. At the time of this article, 17 cases are still pending.<sup>4</sup>

Of course, while substantial financial compensation is appropriate in cases of wrongful convictions, one must also look at the wrongfully convicted person as a victim, we must also ask ourselves; **How can the criminal justice system get it so wrong in the first place?** The answer to that question may be more troubling than many would care to consider.

A 2015-2016 study of 1,833 wrongful conviction exonerations by the National Registry of Exonerations revealed the following contributing factors or a combination thereof:

- 56% resulted from perjury
- 51% resulted from official misconduct
- 31% resulted from mistaken witness identification
- 23% resulted from misleading forensic evidence
- 12% resulted from false confessions



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As is clearly demonstrated in the outcome of the National Registry study, the vast majority of wrongful convictions occur because of (1) perjury 56% and/or (2) official misconduct 51%.<sup>5</sup>

#### **Perjury and Official Misconduct**

Truth be told, perjury in criminal prosecutions is committed at an alarming rate. Studies have shown that those committing perjury include, police officers, forensic scientist testifying for the government, the real criminal who lies under oath to get a defendant convicted, and jailhouse snitches who lie to gain from their false testimony. There are also countless examples of prosecutors deliberately lying to a jury to gain a criminal conviction.

One of the most troubling, often unaddressed elements of the criminal justice system is its routine failure to hold police and prosecutors accountable for misconduct. In those cases where a prosecutor has reason to believe that police are being untruthful, they often turn a blind eye to perjured testimony in favor of gaining a conviction. Far too many criminal prosecutors mistakenly see their role as a defender of justice “**at any cost**”. This mindset often leads to the misplaced proposition that “**the end justifies the means.**”

#### **Prosecutorial Misconduct**

Both state and federal prosecutors wield enormous authority. They, and only they, decide who will be prosecuted, when, and if, they should bring a case to a grand jury, or what charges will be brought, sentence enhancements, and who they will entertain plea deals with. Their power during

criminal proceedings is absolute and unmatched, even by judges.

Prosecutors have little incentive to “**hold the line**” when it comes to maintaining high ethical standards. The United States Supreme Court ruled in *Imbler v. Pachtman*, 424 U.S. 409 (1976), that federal and state prosecutors have “**absolute immunity**” for any actions undertaken in the performance of their official duties. In theory, the absolute immunity doctrine is designed to insulate prosecutors from liability through litigation that they claim, would detract from their duties and perhaps interfere with their prosecutorial duties when trying cases. Massachusetts General Law likewise protects prosecutors from liability.<sup>6</sup>

The United States Supreme Court wrote in *Van de Kamp v. Goldstein*, 555 U.S. 335 (2009) that **absolute immunity** was a “*balance of evils.*” Writing in that case of the court further wrote that it is “*better to leave un-redressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation.*”

Given this rationale, it is easy to see how prosecutorial misconduct can quickly spiral out of control. Serious concerns arise when one takes a closer look at the issue of prosecutorial misconduct.

#### **Harmful Error!**

Perhaps the most troubling of all is the sad fact that far too often, acts of prosecutorial misconduct go unpunished. A 2003 study by the Washington, DC based Center for Public Integrity titled “**Harmful Error**” proves that point. The CPI study identified over of 2,000 cases of prosecutorial misconduct so bad that appellate courts were forced to dismiss criminal charges. The study also found that 223 prosecutors around the country had been cited by judges for two or more cases of unfair conduct. Astonishingly, only two of those prosecutors were disbarred.

A 2010 six month investigation by USA TODAY into prosecutorial misconduct documented 201 cases in which judges found that federal prosecutors violated laws and or ethics rules. Those



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## Unless meaningful Criminal Justice Reforms take place, the Massachusetts tax payer will undoubtedly continue to dish out huge amounts of hard earned dollars paying for wrongful convictions

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violations put people in prison. The 2010 USA TODAY investigation also found that although six prosecutors were disciplined, only one prosecutor was disbarred.<sup>7</sup>

In a 2013 report, the Center for Prosecutorial Integrity noted *"Each year, thousands of Americans are victimized by prosecutors who overcharge, withhold key evidence, and engage in a myriad of other forms of professional misconduct."*

At the present time, there are a number of cases of wrongful convictions in Massachusetts that have yet to be resolved.

### Victor Rosario

In 1982, eight people burnt to death in a house fire in Lowell. Subsequently, in 1983 a man named Victor Rosario was convicted of murder and sentenced to spend the rest of his life in prison. Rosario would spend 30 years in prison before his conviction would be thrown out. Following an in-depth investigation by the New England Center for Investigative Reporting and the Boston Globe fire scientist specialist testified that the Lowell fire may have been an accident and not a case of deliberate arson as investigators first concluded. Undoubtedly, when and if any damages are awarded in the Rosario case, they will be quite substantial.

### Charles L. Wilhite

In 2010 Charles L. Wilhite was convicted in a first degree murder in a case that had taken place in October 2008 in Springfield. Wilhite was sentenced to a mandatory life without parole term. Had it not been for a two-year effort by his supporters including Lois Ahrens of RCPP who working with

Vira Douangmany Cage and others from the Campaign to get Justice for Charles Wilhite, he may never have been freed. In 2012 a Superior Court Judge ruled that Wilhite was entitled to a new trial. Hampden County prosecutors would decide to retry the case. The new trial that began on January 7, 2013 would end a few days later with the jury finding him "not guilty."

### Angel Echavarria

Thanks to the work of the staff at the Justice Brandeis Law Project at the Schuster Institute for Investigative Journalism at Brandeis University, Angel Echavarria, who had been wrongfully convicted of first degree murder walked out of state prison a free man in 2015. Echavarria had been imprisoned for a 1994 murder in Lynn and spent almost 21 years in state prison. One can only guess at the amount of damages in this case.

### Mark Schand

In another yet unsettled Hampden County wrongful murder conviction case Mark Schand would spend 26 years, 11 months, and 25 days in prison serving a life without the possibility of parole sentence for a crime that he did not commit before being freed

In September 1986, Victoria Seymour 25 who was an innocent bystander was shot and killed in Springfield. Police called it a drug-related robbery. After being mistakenly identified, Mark Schand was arrested and subsequently convicted.

After long suppressed and newly discovered evidence came to light as a result of the hard work of long time Springfield criminal defense attorneys, John and Linda Thompson and New Jersey based



Centurion Ministries, Hampden County Superior Court Judge C. Jeffery Kinder ordered an evidentiary hearing on Schand's motion for a new trial. In his ruling granting Schand a new trial, Judge Kinder noted that the eye witness who had earlier claimed Schand was the perpetrator. recanted his original identification. The judge also noted that three new witnesses had also come forward and testified that Schand was not at the scene of the crime. In 2013 Mark Schand would be freed from the Massachusetts Correctional Institution in Norfolk.

Since being released, Schand, his supportive family, and his attorneys, have been engaged in another protracted legal battle with the state as they seek to collect the \$500,000 in damages allowed under the so-called Massachusetts Recovery Law. That law, enacted in 2004 applies retroactively to people like Mark Schand who were convicted before its enactment.

### **The Untold Hardships of Wrongful Convictions**

The cases of Mark Schand and the others mentioned here, call to mind the absolute tragedy of wrongful convictions. Not only do they cost Massachusetts taxpayers considerable sums of money, they also have a profound impact on both victims families as well as the families of those who have been wrongfully convicted.

Often, family members of victims of violent crimes, especially homicide, endure untold hardships. During court proceedings they are led to believe that the criminal justice system has apprehended the right man. Prosecutors inevitably totally convince them that they are prosecuting the person who murdered, or otherwise hurt their loved one. Prompted by prosecutors, they are forced to sit in courtrooms throughout the duration of jury trials and to listen and watch as very disturbing evidence is introduced. One cannot imagine what a severely distressing process they must endure. Then, often many years later, they are re-contacted and told that the person who they had been led to believe was guilty, was in fact innocent, that a "mistake" had been made When these events occur, and as noted,

occur quite frequently, they turn the concept of closure and finality on its head..

More troubling to the loved ones so impacted, is the reality that no one, not the police, prosecutor, or anyone else responsible for their distress and suffering is ever going to be held accountable. The family of the wrongfully convicted defendant has also gone through similar hardships. They have been forced to endure financial hardship, children have often lost a mother or father for decades, many have been forced to turn to social welfare to survive. The list goes on and on.

### **Criminal Justice's Best Kept Secret**

The best kept secret of the American criminal justice system may well be the excessive number of wrongful convictions. A recent check with The National Registry of Exonerations shows that they have now documented 1,878 cases of wrongful convictions<sup>8</sup>. Of those exonerated;

- **348 were sentenced to life**
- **91 were sentenced to life without parole.**
- **116 exonerates were sentenced to death!**

Without any doubt, there exists an abundance of empirical evidence that clearly shows that wrongful convictions not only cost taxpayers astronomical sums, but they also contribute in undermining the integrity of the entire criminal justice system.

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1. See *Waters v. Town of Ayer*, U.S.D.C. (D. Mass.), Case No. 04-cv-10521

2. On June 30, 1972 more than 600 death sentences in the United States were voided in *Furman v. Georgia* (408 U.S. 238)

3. *Boston Globe*, "City paid \$36m to settle police lawsuits", Todd Wallack, Jan Ransom & Travis Anderson, May 15, 2015.

4. *Springfield Republican*, "With his freedom won, man seeks redemption," Dan Glavn.

5. Klara Stephens, Research fellow, The National Registry of Exonerations, September 6, 2016

6. For further discussion, See the Massachusetts Tort Claims Act; M.G.L. Ch. 258, Sec. 1, et, Seq.

7. USA TODAY, "Prosecutors conduct can tip the scale," Brad Heath & Kevin McCoy, September 23, 2010,

8. Data source: Klara Stephens, Research Fellow, The National Registry of Exonerations, September 6, 2016.